APPEAL NO. 041895
FILED SEPTEMBER 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 30, 2004. The hearing officer decided that the appellant (claimant herein) did sustain a compensable injury to his left foot on (date of injury No. 2); that the respondent (carrier herein) is not relieved from liability under Section 409.002; that the claimant had timely notified his employer pursuant to Section 409.001; and that the claimant did not have disability resulting from his left foot injury. The claimant files a request for review in which he argues that the determinations on injury and disability were contrary to the great weight of the evidence. The carrier filed a response to the claimant's request for review, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Disability in this case turns on whether the claimant's compensable injury of (date of injury No. 2), included a new injury or enhancement of a preexisting condition of his lumbar spine. A forklift bumped the claimant on his left side as he was walking behind the forklift. He did not fall down but his left foot slipped under the forklift. The claimant reported the incident to his supervisor in case of "future complications." The claimant did not experience pain at that time and did not file a claim. The claimant was still undergoing treatment for a lumbar injury that he sustained on (date of injury No. 1). He had had surgery in February 2003. On December 17, 2003, the claimant had received an injection in his lower lumbar region for pain from the 2002 injury. On (date of injury No. 2), treating doctor records indicate the observation of a bruise to the claimant's left foot resulting from the forklift incident. The claimant testified that the ankle healed on its own without treatment. At about the same time, the carrier denied several of the treatment bills in connection with the 2002 injury. On January 28, 2004, the claimant was placed on Family Medical Leave for the 2002 injury. The claimant testified that on the basis of diagnostic work, his treating doctor told him in early February 2004 that he had sustained a new injury. An MRI dated February 12, 2004, shows no disc herniations. On February 17, 2004, the claimant filed the claim for a new injury to his lumbar spine resulting from the forklift incident. The claimant has not been returned to work by his treating doctor since going on leave in January 2004.

We have held that the questions of injury and disability are questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence.

Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence on the issues of compensable injury and disability and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge